

DELTA FUNDS, INC.

IBLA 74-337

Decided March 18, 1975

Appeal from a decision of Nevada State Office, Bureau of Land Management, rejecting, in part, application for noncompetitive lease of geothermal resources, N 8470.

Affirmed, as modified.

1. Bureau of Land Management -- Geological Survey -- Geothermal Leases: Known Geothermal Resources Area
There is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in section 2(e) of the Geothermal Steam Act of 1970.

APPEARANCES: George W. Moffitt, Jr., President, Delta Funds, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Delta Funds, Inc., has requested reconsideration of its appeal IBLA 74-337, dismissed by the Board's Order of February 24, 1975, because no statement of reasons had been filed. With its petition, Delta submitted a copy of its letter to the Board under date of July 19, 1974, intended to be its statement of reasons. Delta has since transmitted evidence that the original of the letter was, in fact, delivered to this Board.

When the Order of February 24 was issued, we had scrutinized the docket records and the subject case file but we found no evidence to indicate the receipt of a statement of reasons. Obviously,

this was not the fault of the appellant. Accordingly, we vacate our Order of February 24, 1975, and now consider the appeal of Delta on its merits.

Delta filed application N 8470 during the January 1974 filing period for a noncompetitive lease of geothermal resources in secs. 4 and 18, T. 30 N., R. 47 E., and sec. 26, T. 31 N., R. 47 E., M.D.M., Lander County, Nevada.

The Nevada State Office, Bureau of Land Management (BLM), by its decision of May 21, 1974, rejected Delta's application as to land in sec. 4, T. 30 N., R. 47 E., and sec. 26, T. 31 N., R. 47 E., because of being within a known geothermal resources area (KGRA) through competitive interest shown by conflicting applications. 43 CFR 3200.0-5(k)(3).

Delta contends that BLM erred in its interpretation of a competitive interest KGRA, and that the conflicting applications identified by Delta do not support such a finding.

The Beowawe KGRA (36 F.R. 5626, March 25, 1971), was expanded effective February 1, 1974, by the addition of some 20,512 acres, including sec. 4, T. 30 N., R. 47 E., and sec. 26, T. 31 N., R. 47 E., M.D.M., pursuant to a determination by the Geological Survey (39 F.R. 41872, December 3, 1974), under authority of the Geothermal Steam Act of 1970, 30 U.S.C.A. § 1020 (1975 Supp.).

[1] As this Board has held, there is no authority for a State Director, Bureau of Land Management, to make a determination of a known geothermal resources area. Instead, that authority has been delegated by the Secretary of the Interior to the Director, Geological Survey. KGRA determinations must be based upon the evidentiary factors stated in section 2(e) of the Geothermal Steam Act of 1970. Hydrothermal Energy and Resources, Inc., 18 IBLA 393 (1975). It thus was error for BLM to declare the above-described land in Delta's application to be within a KGRA prior to such a determination by the Geological Survey. That issue is now moot, however, because of the subsequent determination by the Geological Survey. The BLM decision is so modified.

Section 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1975 Supp.) directs competitive bidding for geothermal resources leases on lands which are determined to be within a KGRA before the issuance of a lease on such lands, even though the KGRA determination is made after the pertinent application is filed. Hydrothermal Energy and Resources, Inc., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified.

Douglas Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

